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Application No. 10/668646
*Page 6**Amendment*
*Attorney Docket No. D25.2H-11301-US01***Remarks**

This Amendment is in response to the Office Action dated May 16, 2006, wherein claims 1-25 were rejected under 35 U.S.C. §103(a) as being obvious over U.S. 4,119,202 to Roth in view of U.S. 5,887,717 to Andersen et al (Andersen) and further in view of U.S. 5,647,191 to Villemure; claims 26-32 were rejected under 35 U.S.C. §103(a) as being obvious over Roth in view of Andersen and Villemure and further in view of U.S. 3,118,537 to Copping.

The following comments are presented in the same order and with paragraph headings corresponding to the Office Action.

Allowable Subject Matter.

In the Office Action the previous indication that claims 24-25 contained allowable subject matter was withdrawn.

Claim Rejections – 35 USC §103

In the Office Action claims 1-25 and 33-38 were rejected under §103(a) as being obvious over Roth in view of Andersen and further in view of Villemure. Applicants traverse this rejection.

As indicated above independent claim 1 recites a package assembly comprising first and second support members, each having a support surface and sides, of which at least one side of each member are arranged along a common plane and held immediately adjacent by at least one adhesive. The support members further comprise at least one wall which defines at least a portion of the side. The height of at least a portion of the wall of the first support member and second support member tapers from a first height to a second height, wherein the second height is less than the first height. A plurality of containers are positioned on each support member with a top pad positioned on top of the containers and extending over at least a portion of each of the containers. A film at least partially encapsulates the assembly of support members, containers and top pad.

In the Office Action a combination of three distinctly different references, Roth, Andersen and Villemure are purported to obviously disclose all of the elements of the instant

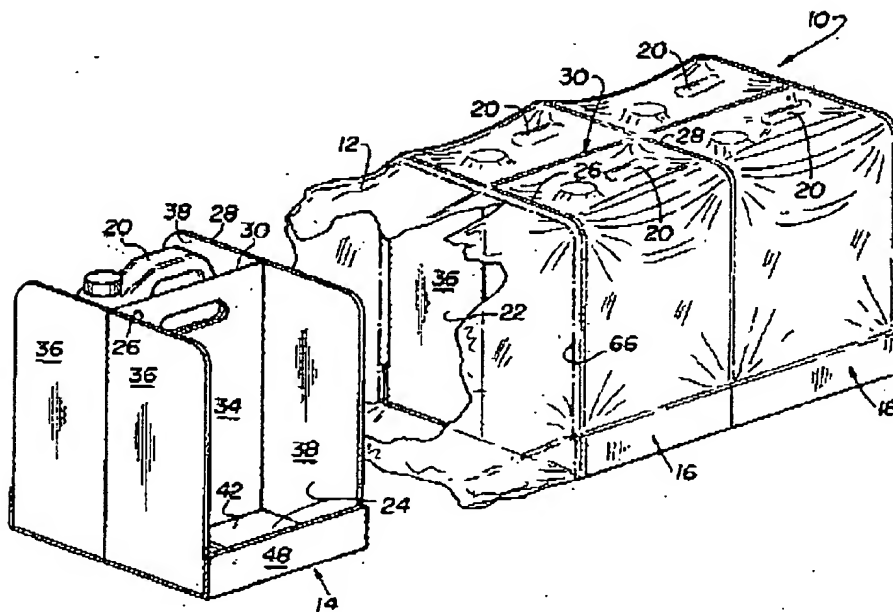
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claims. Applicants respectfully assert that not only is there no motivation to combine the cited references in the manner proposed by the Office Action, but that even if such a combination were suggested, the resulting hybrid fails to teach or suggest all of the elements of the instant claims.

Roth is cited in the Office Action for the teaching of wrapping three support members, containing products, in a film. Roth however, does not teach a top pad. The Office Action points to Andersen as teaching a single support member supporting a plurality of containers with a top pad and film encapsulation. Based exclusively on this, the Office Action asserts that it would be obvious use a top pad to create a unitary top surface for the package structure of Roth. Applicant disputes this assertion.

The package design of Roth (reprinted below) provides for containers (14, 16, 18), each of which include three supports (26, 28, 30). The supports (26, 28, 30) all clearly extend at least to the height of the product containers. The fact that the supports all have the same height, which is at least as high as the height of the products clearly provides a uniform top surface to the package assembly.



Given that the product of Roth is provided with a uniform top surface, there is simply no motivation that would cause one of ordinary skill in the art to seek to provide additional uniformity to the top surface of the Roth package. Moreover, it should be noted that in

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Andersen it is stated that an inventive discovery is the placement of a top pad on top of the products themselves, as opposed to the walls of the support, is a feature of an assembly which solves the problem of packaging taller containers (Column 1, lines 55-62). Thus, one of ordinary skill in the art would find no suggestion in Andersen to add a top pad to the package of Roth as such a top pad would merely rest atop the side supports (26, 28, 30) of the Roth containers (14, 16, 18), and would provide no unitizing affect on the product containers beneath.

Thus, neither Roth nor Andersen provide the requisite motivation or suggestion under §103 to combine the top pad of Andersen with the package of Roth. The further addition of an adhesive, such as Villemure is purported to disclose, does nothing to address the lack of motivation to combine Andersen with Roth.

Assuming arguendo that the necessary motivation can be found to combine the references in the manner proposed in the Office Action, it must be noted that instant claims 1 and 24 both recite that the top pad be positioned *on top of the containers*. As has already been discussed, if a top pad were in fact added to the package of Roth, the taller supports 26, 28, and 30 of Roth would block the top pad from being positioned on top of the containers. For at least this reason the rejection is respectfully traversed.

In regard to the statements in the Office Action that the various tapered configurations recited in the instant claims are disclosed by Roth (Claims 2-3), or are a matter of design choice (claim 4), Applicants respectfully disagree.

In regard to the element of a tapered wall height, as described is described in claim 2 for example, the instant claim states that the wall height tapers from a first height to a second height, wherein the second height is less than the first height. In Roth, there is no taper of any kind disclosed. Applicants respectfully assert that a wall having a substantially uniform height with a single rounded corner, such as Roth depicts (see walls 36 and 38), is simply not the same as a wall which tapers from a greater height to a lesser height as the instant claim recites. While certainly Roth provides a rounded corner on the side walls (36, 38), the height of the side walls (36, 38) does not taper from the height of the back wall (34) to the front wall (48).

In regard to the Office Action's assertion that a taper such as is described in claim 4 "represents an aesthetic choice of design over the rounded corner of Roth" Applicants

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respectfully disagree. In the present Application it is stated that one of the problems with prior package assemblies is that "many display packages which also serve as shipping packages restrict the full view and access of the containers due to the use of sides and lids of material" (page 2, lines 19-22). The Application goes on to describe various wall tapering configuration which provide structural support but also "leave enough of the containers 14 exposed to allow a viewer to readily ascertain the quantity of containers 14 that are positioned on the support members 12 from a wide range of viewable angles" (page 13, lines 4-7). It is difficult to conceive how Roth's walls which are not tapered and nearly uniform in height (but provided with rounded corners), could provide the viewability of a tapered wall such that the present Application describes. Rather than being a simple design choice, the use of a taper in a package side walls is a clear improvement over packaging assemblies such as Roth, which simply do not provide the retail viewability that package assemblies of the present invention describe.

In the Office Action claims 26-32 were rejected under §103(a) as being obvious over Roth in view of Andersen and Villemure and further in view of Copping. Though Applicants respectfully disagree with the rejection, for the purposes of advancing prosecution Applicants have cancelled claims 26-38 without prejudice or disclaimer.

Lastly, though Applicants believe the rejections to claim 24 have been respectfully traversed, Applicants have however amended claim 24 to clarify that the claim is in a front side to front side arrangement. There is nothing in the cited references which teach or suggest first and second support members wherein the front side of each support member is immediately adjacent to one another in the configuration manner described by instant claim 26.

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Conclusion

Based on at least the foregoing amendments and remarks, Applicants respectfully submit this application is in condition for allowance. Favorable consideration and prompt allowance of claims 1-24 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

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